

THE HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

HUNTERS CAPITAL, LLC, a Washington limited liability company, SRJ ENTERPRISES, d/b/a CAR TENDER, a Washington corporation, THE RICHMARK COMPANY d/b/a RICHMARK LABEL, a Washington company, ONYX HOMEOWNERS ASSOCIATION, a Washington registered homeowners association, WADE BILLER, an individual, MADRONA REAL ESTATE SERVICES LLC, a Washington limited liability company, MADRONA REAL ESTATE INVESTORS IV LLC, a Washington limited liability company, MADRONA REAL ESTATE INVESTORS VI LLC, a Washington limited liability company, 12TH AND PIKE ASSOCIATES LLC, a Washington limited liability company, REDSIDE PARTNERS LLC, a Washington limited liability company, OLIVE ST APARTMENTS LLC, a Washington limited liability corporation, BERGMAN'S LOCK AND KEY SERVICES LLC, a Washington limited liability company, MATTHEW PLOSZAJ, an individual, SWAY AND CAKE LLC, a Washington limited liability company, SHUFFLE LLC d/b/a Cure Cocktail, a Washington limited liability company, on behalf of themselves and others similarly situated,

Plaintiffs,

vs.

Case No. 2:20-cv-00983 TSZ

DECLARATION OF RICH FOX IN
SUPPORT OF REPLY REGARDING
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION

Noted: February 18, 2022

CITY OF SEATTLE,
Defendant.

I, Rich Fox, declare as follows:

1. I am over eighteen years of age and am competent to testify herein. I make the following statements based on my personal knowledge.

2. I am an owner of Poquitos Capitol Hill, a Mexican fast-casual restaurant located at 1000 E. Pike St. on the corner of 10th Ave and E. Pike Street ("Poquitos"). Poquitos was located at this address during all of 2020.

3. I understand that the City has asserted that Poquitos opted not to join this lawsuit because the damage caused by the Capitol Hill Occupied Protest ("CHOP") was only slight. In support of this assertion, the City produced an email dated June 14, 2020, from me to Jill Cronauer, when CHOP was only in its 5th day, and more than two weeks before CHOP was over. The inferences the City would like the Court to draw from this email are not warranted or fair. Poquitos was hesitant to join the lawsuit because at that point there was hope that the economic impacts of CHOP would be minor and that CHOP would stabilize into a peaceful and positive environment. It was also concerned about the perception that by joining the lawsuit, it did not support the overall cause for the protests.

4. Initially, the CHOP appeared to be a positive community expression of support for the Black Lives Matter movement, and Poquitos supports the Black Lives Matter movement. But the atmosphere and reality of the situation quickly changed to a dangerous and lawless environment where no one was in control.

5. Poquitos suffered greatly from the impacts of the CHOP, including having graffiti painted on the building, incurring the cost of boarding up windows (and taking them down), lost

1 revenues due to closures that were due to the unsafe environment, and costs associated with
2 spoiled food as a result. After June 14, 2020, Poquitos had to close completely, or close early
3 (at 6:00 p.m.) on numerous occasions due to safety concerns for Poquitos' employees and patrons
4 as clashes between protestors and police often caused tear gas and other crowd control substances
5 to surround the restaurant. The time between 6:00 p.m. and closing are frequently the most
6 profitable in a restaurant like Poquitos.

7 6. The CHOP and surrounding area devolved into a chaotic and threatening
8 environment that was unlike Capitol Hill's normal atmosphere. There were nightly clashes
9 between protestors and police. Yet the police and fire departments would not respond to basic
10 calls for assistance within the CHOP and areas adjacent. Men walked around the neighborhood
11 with machine guns strapped on their backs. Historic buildings were tagged with graffiti. There
12 were anecdotes of CHOP participants accosting and threatening neighborhood residents those
13 that did not look like they belonged in CHOP. There was a meeting of Capitol Hill businesses
14 in which some businesses reported that they were being extorted to pay for CHOP
15 "security." During CHOP, many people stopped visiting Capitol Hill due to the safety concerns.

16 7. I understand that the City implied that Poquitos only suffered damages of \$123.32
17 relating to a broken window because Poquitos submitted a claim with the City for a broken
18 window. That is categorically false. Poquitos suffered thousands in damages as a direct result
19 of the City's encouragement, support and eventual lack of responsibility for the devolving state
20 of CHOP. I have outlined the various categories of damages above, which are no doubt similar
21 to other restaurants in and around the CHOP.

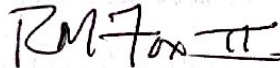
22 8. While Poquitos received a payment relating to the broken window from the City,
23 the payment was nothing compared to Poquitos's ultimate amount of damages. I do not believe
24 that Poquitos knowingly waived or released its other damages that are being sought in this
25

1 lawsuit, and Poquitos still wishes to be made whole by the City as an acknowledgment of their
2 mismanagement and lack of responsibility for the impacts of CHOP. A copy of that claim that
3 was submitted on July 10, 2020, by my General Manager, Liz Elkins, at the City's invitation, is
4 attached hereto as Exhibit A. Furthermore, when the City offered to reimburse businesses, they
5 did not offer to reimburse them for lost revenues that occurred as a result of CHOP.

6 9. Poquitos requests that this court grant Plaintiffs' motion for class certification to
7 provide businesses in Capitol Hill with an orderly process for submitting their claims to be made
8 whole.

9 I declare under the penalty of perjury under the laws of the State of Washington that the
10 foregoing is true and correct.

11 DATED this 18th day of February, 2022 at Seattle, Washington.

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14 Rich Fox
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EXHIBIT A



City of Seattle CLAIM FOR DAMAGES

CITY USE ONLY	
CLAIM NUMBER	99090
DATE FILED	7-10-20

Note:
Type or Print Legibly.
See instructions on back.

CLAIMANT	NAME (FIRST - MIDDLE - LAST, OR BUSINESS NAME) Poquitos		DATE OF BIRTH	HOME PHONE
CURRENT HOME ADDRESS (NUMBER - STREET - CITY - STATE - ZIP) 1000 E Pike Street				BUS. PHONE
HOME ADDRESS AT THE TIME THE CLAIM AROSE (NUMBER - STREET - CITY - STATE - ZIP)			CELL PHONE	DIAGRAM Use if this will help you locate or describe what happened
			E-MAIL ADDRESS	
ACCIDENT/LOSS	DATE 6/12/20	TIME 12:05am		
LOCATION/SITE	BE VERY SPECIFIC: STREETS, ADDRESSES, etc. 1000 East Pike Street Poquitos/Havana Parking Lot			
WHAT HAPPENED?	DESCRIBE IN YOUR OWN WORDS HOW THIS LOSS OCCURRED AND WHY YOU BELIEVE THE CITY IS RESPONSIBLE. (additional space on reverse side or attach additional pages and supportive documents as needed)			
A man threw a rock through our widow. Then used a flashlight to break the glass out. Walked in and stole a bike (we were able to get the bike back from the CHOP because it had GPS). We would like to be reimbursed for the replacement glass panel - \$123.32 Responsible for the lawlessness				
NAMES, ADDRESSES, AND PHONE NUMBERS OF ALL PERSONS INVOLVED IN OR WITNESS TO THIS INCIDENT				CITY DEPT?
1) Liz Elkins				CITY EMPLOYEE
2) _____				CITY VEHICLE NUMBER, LICENSE, etc.
3) _____				
Ph: 2064654084				
Ph: _____				
Ph: _____				
WAS YOUR PROPERTY DAMAGED? (i.e. Home, Auto, Personal Property)				
<input checked="" type="checkbox"/> YES IF SO, THEN FULLY DESCRIBE - SUCH AS AGE, MAKE, MODEL, CONDITION, VALUE, OR EXTENT OF DAMAGE				
<input type="checkbox"/> NO (additional space on reverse side or attach additional pages and supportive documents as needed)				
Glass panel				
WERE YOU INJURED?				
<input type="checkbox"/> YES IF YES, THEN COMPLETE THE FOLLOWING:				
<input checked="" type="checkbox"/> NO (additional space on reverse side or attach additional pages and supportive documents as needed)				
DESCRIBE YOUR INJURY (IDENTIFY YOUR DOCTOR(S))				
WAGE LOSS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YES, THEN RATE OF PAY: _____				
KIND OF WORK _____ EMPLOYER _____				
AMOUNT CLAIMED (if known) \$ 123.32				
SIGNATURE OF CLAIMANT (AND TITLE, IF A BUSINESS)				
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct				
EXECUTED this 3 day of July 20				
At Seattle King County, Washington				
X				

This claim form must be signed by the Claimant, verifying the claim; or pursuant to a written power of attorney, by the attorney in fact for the claimant; or by an attorney admitted to practice in Washington State on the claimant's behalf; or by a court-approved guardian or guardian ad litem on behalf of the claimant.

PRESENTATION OF A CLAIM

This official City of Seattle document must be signed, and the form with original signature (not a photocopy or scanned copy) must be mailed *or* delivered.

Mail to:
CITY CLERK'S OFFICE
PO BOX 94728
Seattle, WA 98124-4728

Deliver to:
CITY HALL
600 Fourth Ave., 3rd floor
Between James St & Cherry St
Business Hours: Monday-Friday, 8:00 a.m.-5:00 p.m.
Closed on weekends and official City of Seattle holidays

An adjuster will be assigned to your claim after it is filed with the City Clerk's Office. **It is to your advantage** to present with your claim relevant supporting documents (receipts, cancelled checks, estimates, billings, etc.) or additional evidence (photos, diagrams, etc.). Please note that the claim form and other supporting documents filed with the City Clerk are considered public records under Revised Code of Washington Chapter 42.56, the Public Records Act. Public records are presumed subject to disclosure upon request. Additional claim forms can be downloaded from the Risk Management website: (<http://www.seattle.gov/riskmanagement/>)

EXPLANATION OF THE CLAIMS PROCESS

Shortly after your claim is filed in the City Clerk's Office, it is delivered to the Claims Section. The claim is then assigned to an adjuster who will contact you with your assigned claim number and their contact information and then they will conduct an investigation which includes a written response from the involved department(s). The Claims Section will then evaluate and recommend a reasonable resolution of your claim which will be one of three alternatives:

1. Pay a sum of money.
2. Tender – transfer to another party or entity responsible for your alleged damages.
3. Deny – where there is no evidence of any negligence by the City of Seattle.

If you have any questions about filing then do not hesitate to call 684-8213 during normal business hours Monday-Friday, 8:00 a.m.-5:00 p.m. If you have any questions after filing, call the Claims Adjuster assigned to your claim.

CS 19.10 REV. 12/14

THIS SPACE PROVIDED FOR ADDITIONAL INFORMATION



POQUITOS
1000 E PIKE STREET
SEATTLE, WA
98122

CITY OF SEATTLE

20 JUL 10 AM 9:35

CITY CLERK

*City Clerk's Office
PO Box 94728
Seattle, WA 98124-4728*

98124-472828

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